

- DECISION -

Claimant:
MELANIE GROSS

Decision No.: 2009-BR-12

Date: June 4, 2012

Appeal No.: 1144054

S.S. No.:

Employer:
UNIVERSITY OF BALTIMORE 360228

L.O. No.: 64

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: July 4, 2012

REVIEW OF THE RECORD

The threshold issue in this case is whether the claimant, as the appealing party, is entitled to the reopening of the original dismissal of this case. In the instant case, the claimant filed the petition to reopen the dismissed case over 7 days past the date of the dismissal decision. The Board adopts the Chief Hearing Examiner's decision and in further support finds:

Pursuant to *COMAR 09.32.11.02(B)(1)*, "The interested parties shall be given at least 7 days' notice in writing of the time and place of any hearing before the hearing examiner or Board of Appeals." The record contains a computer-generated simultaneously created hearing notice establishing a hearing on the merits of this case in conformance with *COMAR 09.32.11.02(B)(1)*. Notice of the hearing was sent to all

parties at their addresses of record. There is a rebuttable presumption that a letter properly addressed will be delivered to the address in due course. *Border v. Grooms*, 267 Md. 100 (1972).

The claimant has not established by a preponderance of the evidence that she is entitled to reopening of the dismissed case under the reasons enumerated in *COMAR 09.32.11.02(O)*.

COMAR 09.32.11.02(N) provides that if a party appealing fails to appear at the hearing after having been given the required notice of the hearing, the hearing examiner may dismiss the appeal. Failure to be present at the location designated for the hearing within the 10 minutes of the scheduled time is a failure to appear within the meaning of this section.

COMAR 09.32.11.02(O)(3), provides, "Misreading of a properly prepared hearing notice as to the date, time, and place of the hearing is not good cause to reopening a dismissed case." There is insufficient evidence that the reason for the dismissal in the case at bar is attributable to Agency error, an error by the United States Postal Service, an unforeseen and unavoidable emergency, or for reasons relating to an improperly denied postponement request.

COMAR 09.11.02(O)(4) provides that a petition to reopen an appeal shall be delivered in person to the Appeals Division or postmarked within seven days of the date of the Dismissal Notice. A failure to request a reopening within the specified time provisions may lead to a denial of the petition to reopen.

In the instant case, the claimant did not request a reopening within 7 days of the dismissal. Therefore, the Chief Hearing Examiner's decision to deny the reopening petition shall be affirmed. The law does not provide for consideration of good cause for filing a late petition to reopen a dismissed case. *COMAR 09.32.11.02(O)(4)*. While the Board may be naturally reluctant to enforce this rule when the time it allows for the transmission has been exceeded by a small margin, the Board could not rightfully modify its express and definite terms, or make its application depend on a mere measurement of the extent to which it has been transgressed, in order to avoid the prescribed circumstances of the delay in a particular case. *Paraphrasing Horseman v. Furbush*, 124 Md. 581, 585 (1915); *Castelberg v. Hamberger*, 133 Md. 42, 47 (1918).

Although the appellant may view this as a technicality, due process and judicial economy require that a party appear for a hearing on its scheduled date, time and place in the absence of a permissible excuse within the meaning of *COMAR 09.32.11.02(O)(2)* and to timely request a reopening within the meaning of *COMAR 09.32.11.02(O)(4)*.

Therefore, the Board finds based upon a preponderance of the credible evidence in the record, that the claimant failed to file a timely petition to reopen the dismissed case; therefore, the claimant failed to meet her burden of demonstrating that she had good cause to reopen the dismissed appeal within the meaning of *COMAR 09.32.11.02(O)*. The decision shall be affirmed for the reasons stated herein and in the Chief Hearing Examiner's decision.

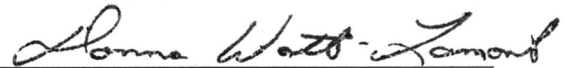
DECISION

The appealing party failed to demonstrate compliance with the requirements of COMAR 09.32.011.02(O)(2) in order to have the above captioned case reopened. The dismissal of the case remains in effect.

The Hearing Examiner's decision is affirmed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD/jm

Copies mailed to:

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Susan Bass, Office of the Assistant Secretary